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**TAMING THE 'WILD WEST' – INTEGRATING THE
FEDERALLY ADMINISTERED TRIBAL AREAS OF
PAKISTAN**

by

Mateen A. Mirza

December 2005

Thesis Advisor:
Second Reader:

Glenn E. Robinson
Gordon McCormick

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**TAMING THE 'WILD WEST' – INTEGRATING THE FEDERALLY
ADMINISTERED TRIBAL AREAS OF PAKISTAN**

Mateen A. Mirza
Major, Pakistan Army
B.Sc (Honors) War Studies, Balochistan University, 2002

Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF SCIENCE IN DEFENSE ANALYSIS

**NAVAL POSTGRADUATE SCHOOL
December 2005**

Author: Mateen A. Mirza

Approved by: Glenn E. Robinson
Thesis Advisor

Gordon McCormick
Second Reader

Gordon McCormick
Chairman, Department of Defense Analysis

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ABSTRACT

Pakistan's tribal areas have become a refugee for Al-Qa'ida terrorists and other criminals. Criminal elements have been able to take advantage of the Federally Administered Tribal Areas (FATA) because these lands enjoy a unique legal status dating back to the British Empire. The influx of Afghan refugees following the Soviet invasion has likewise provided fertile soil for religious extremism. Religious extremists and hardliners continue to be educated, trained, and sheltered in madrassas operating in tribal areas. Extreme poverty in the FATA lands contributes to their 'wild west' atmosphere, including the proliferation of smuggling and other illegal trade.

Fully integrating FATA lands into Pakistan is necessary for both Pakistan and the international community. Pakistan simply cannot afford to have areas operating outside the control of central government and the rule of law. Extending the rule of law to FATA is a necessary step in the prosecution of the war on terror. However, thus far Government efforts to bring the tribal areas into the fold of the normal law of the land have achieved minimal results. Resistance to full integration runs high among certain social forces in FATA. The prevailing environment is thus detrimental to national integration and the security of the country. This study provides an analysis of how tribal areas can be gradually absorbed into Pakistan while offering a strategy to solve administrative, political, and economic problems so that the areas can play a major role in the mainstream life of the nation, while helping the government to establish its writ.

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I. INTRODUCTION

A. INTRODUCTION

Professor Arnold J. Toynbee characterizes the northwest tribal belt of Pakistan as the “cross-roads” of civilizations. Besides being one of the most important areas of the country, primarily because of its strategic location, it is one of “the most sensitive areas in Pakistan and indeed in South Asia.”¹ The area known as the Durand Line extends like a fortification along the border between Pakistan and Afghanistan.² The records establish that this land, which is now Afghanistan and North-West Frontier Province (NWFP) of Pakistan, has seen perhaps more invasion in the course of history than any other country in Asia or even the world.³

Inhabited by various Pathan⁴, Pakhtun, or Pashtun tribes, the tribal areas of Pakistan are a narrow area that runs along the Indus river, and falls between the edge of the administered districts of NWFP and the Pakistan - Afghanistan border. The Federally Administered Tribal Area (FATA) consists of seven⁵ agencies (Bajuar, Mohmand, Khyber, Orakzai, Kurram, North Waziristan, South

¹ S. Akbar Ahmed. *Social and Economic Change in the Tribal Area*. Karachi, Oxford University Press, 1977, 1 And Noor Ul Huq, Rashid A. Khan, and Maqsoodul H. Nuri. *Federally Administered Areas of Pakistan*. Asia Printers Islamabad, 2005.

² "The Durand Line is a term for the poorly marked 2,640 kilometer . . . border between Afghanistan and Pakistan. After being defeated in two wars against Afghans, the British succeeded in 1893 in imposing the Durand line dividing Afghanistan and what was then British India (now North-West Frontier Province and Balochistan Province of Pakistan). Named for Sir Mortimer Durand, the foreign secretary of the British Indian government, it was agreed upon by the representatives of both Afghanistan and the British Empire, but deeply resented by the Afghan Emir, who may have viewed the border as a temporary arrangement rather than a permanent agreement. . . . The border was drawn intentionally to cut through the Pushtun tribes. . . . Afghanistan's Loya Jirga of 1949 declared the Durand Line invalid." Retrieved on September 2, 2005 from http://en.wikipedia.org/wiki/Durand_Line

³ Olaf Core, *The Pathans*. Macmillan and Company Limited, London, 1965. 25.

⁴ The origin of Pathans is not clear. Different hypotheses have been propounded. Some view them as the descendents of Afghana, the son of Saul, the son of Jeremiah, and some think that they are one of the lost tribes of Jews. According to others, they are of Aryan origin. To some they are closer to Arabs. Ibid. 3-8. And Azmat Hayat Khan. *The Durand Line: Its Geo-strategic Importance*. University of Peshawar, 2000. 29-30.

⁵ Constitution of Pakistan, Chapter 3: Tribal Areas. Retrieved on January 14, 2005 from http://www.nrb.gov.pk/constitutional_and_legal/constitution/part12.ch3.html

Waziristan) and five Frontier Regions (FR) (Peshawar, Kohat, Bannu, Dera Ismail Khan, and Tank) with a total area⁶ of 27,220 square kilometers (larger than the American state of Vermont, with 24,903 square kilometers, and smaller than Maryland, with 31,849 square kilometers).⁷ After the creation of Pakistan only three new agencies were created⁸: Mohmand in 1951, and Bajaur and Orakzai in 1973.⁹ The tribal areas have a population of 3.7 million, according to the 1998 national census.¹⁰ The governor of NWFP acts as executive head of FATA on behalf of the federal government.



Figure 1. Tribal Areas: Federal and Provincial Tribal Areas¹¹

⁶“Tribal Areas (FATA)”. Retrieved on January 14, 2005 from <http://www.angelfire.com/al/badela/area.html#FATA>

⁷ Atlas of United States History. Hammond World Atlas Corporation, 2004. U-3.

⁸ "Analysis: Pakistan's Tribal Frontiers." Retrieved on January 14, 2005 from http://news.bbc.co.uk/1/hi/world/south_asia/1711316.stm

⁹ Ibid.

¹⁰ Ibid.

¹¹ “Tribal Areas: Federal and Provincial Tribal Areas”. Retrieved on October 24, 2005 from <http://www.stockaninews.com/OSS3.jpg>

The tribal areas of Pakistan, with rugged terrain, harsh local environment and ecology, are as lawless as was the American "Wild West." Over a period of time, the American wild-west became a prosperous section of the most developed country in the world, but time has almost stopped for much of Pakistan's tribal areas.¹²

B. PURPOSE

Since the Soviet invasion of Afghanistan, the Taliban rule in Afghanistan and the Global War on Terrorism (GWOT), an unusual interest has been attached to these areas, which link Pakistan with the troubled land of Afghanistan. Initially these areas were the battleground for the cold war, turf for hostile overt and covert intelligence operations, and then home to bases to support the Mujahideens fighting against the Soviets. The tribal areas have always been an area of concern for the government of Pakistan, as they are a paradise for criminals and offenders. These areas have become a safe haven for murderers, kidnappers, drug traffickers and car-snatchers. After the Soviet invasion, Mujahideens from all over the world gathered in the tribal areas, which became a jumping-off point for operations against the Soviets. Islamic religious extremism was preached in the area to recruit Mujahideens and inculcate the spirit of *jihad*. Even the government admits that religious extremists and hardliners were educated, trained, and sheltered in madrassas operating in tribal areas.¹³ Lately both the government and U.S. agencies suspect that tribal people have provided refuge to many of the Al-Qaeda terrorists, including possibly Osama Bin Laden. This area is beyond the jurisdiction of the Supreme Court and High Court of Pakistan, and no one there is prohibited from keeping sophisticated modern weapons or carrying out illegal trade. The GWOT and other events in North and South Waziristan forced many analysts to conclude that there is a need for swift administrative reforms, economic development, and political reconciliation in the area in order to approach the GWOT with an improved plan

¹² Irfan Husain, "The Untamed Frontier" Dawn newspaper, 20 March 2004. Retrieved on August 24, 2005 from <http://www.dawn.com/weekly/mazdak/20040320.htm>

¹³ Ibid.

and enhanced vision. These reforms and changes might help bring the tribal areas under the control of the Pakistan government.

FATA is geographically part of Pakistan, but difficult to govern. For centuries the tribal people have resisted invading armies and have maintained self-rule based on local traditions and values. This study provides an analysis of how the semiautonomous tribal areas can be gradually absorbed into Pakistan while offering a strategy to solve administrative, political, and economic problems so the government may establish its writ in the tribal areas and FATA can play a major role in the future of the nation.



Figure 2. The Durand Line: Western Frontier of Pakistan¹⁴.

¹⁴ The Durand Line: Western Frontier of Pakistan. Retrieved on October 24, 2005 from <http://www.kokhavivpublications.com/help/maps/images/afghanistanmap.gif>

II. LAND, TRADITIONS AND STATUS

A. INTRODUCTION

This chapter explains how the tribal areas were initially created, briefly discusses the geography of the area, and focuses on tribal customs that have been followed for centuries. It also discusses the tribal constitution, which is based on tribal traditions and culture. The tribal constitution is often used in solving quarrels arising from the blood feud, disputes over women, and other problems of daily life. Finally, this chapter examines the constitution of Pakistan and its application to the FATA in order to draw pertinent conclusions and recommendations.

During early 19th century, the British in India had established their supremacy over the subcontinent, except for the areas of Balochistan, Sindh, Punjab,¹⁵ and the northwest tribal belt. All of these areas, now part of Pakistan, were practically independent but theoretically under the rule of Kabul until Ranjit Singh became the ruler in 1818.¹⁶ In the first Afghan war, the British suffered a humiliating defeat. Russia, with expansionist designs, took advantage of the British defeat by advancing southwards in central Asia. The British government in England was concerned about this movement of the Russians and considered the movement an imminent threat to the security of the Indian Empire. The British crown in England asked the British government of India to take appropriate measures against Russia. Thus the FATA agencies were laid out by the British¹⁷ in the last decade of the 19th Century under the Forward Policy,¹⁸ which required

¹⁵ The Punjab (which included the province of the NWFP) and Sindh became independent of Kabul during the period of Ranjit Singh in 1818. Sindh came under British rule in 1843 and Punjab in 1849 after the death of Ranjit Singh. The NWFP became an independent province in 1901. Noor, Rashid, and Maqsudaul. *Federally Administered Areas of Pakistan*. 8.

¹⁶ Azmat. *The Durand Line: Its Geo-strategic Importance*. 55-56.

¹⁷ It was the brainchild of Lord Lytton (the Viceroy of India).

¹⁸ This policy will be explained in a subsequent chapter.

establishing a buffer zone to protect the settled areas¹⁹ of British Punjab and the tribal belt from the foreign aggression of Czarist Russia.

B. FATA

The FATA in the NWFP had been the most neglected by all governments which had come to power in Pakistan. The area consists of remote, rugged and somewhat inaccessible mountainous terrain. Except in the Kurram and Orakzai agencies and parts of the Khyber and North Waziristan agencies, rains are scarce. The total irrigated area is only 100 thousand hectares and the total cultivated area is only 190 thousand hectares.²⁰ There is no major industry or business in the area. Tribal people mostly depend on legal and illegal trade between Afghanistan and Pakistan, including smuggling, drug trafficking, etc. Geographically, the FATA can be divided into three parts: the Northern, Central, and Southern regions.²¹

1. The Northern Region

The northern region, lying between the Swat and Kabul rivers, comprises Bajaur and Mohmand agencies. The land is mostly mountainous, with deep ravines and limited irrigated agriculture. The temperature and climatic conditions, however, make it possible to grow a variety of crops including oil seeds, fruits and vegetables.

2. The Central Region

The central region comprises Khyber, Kurram and Orakzai agencies and the Frontier Regions of Kohat and Peshawar. The fertile Khanki, Masturea, and Bara River valleys lie in the foothills of the 4000-meter high snow-clad Koh-e-

¹⁹ Those places which were finally conquered by the British rulers of India are generally called the settled areas of NWFP, while territory that resisted foreign rule until the end is known as FATA. Scholars and anthropologists have used the words *Nang* (honor) for the tribal areas and *Qalang* (taxpayers) for the settled areas in the NWFP. The tribal people in FATA still refuse to pay taxes. Rahimullah Yusufzai. "Backyard to the Fore". Retrieved on July 20, 2005 from <http://www.jang.com.pk/thenews/mar2004-weekly/nos-14-03-2004/spr.htm#top>

²⁰ Ibid.

²¹ S. Alam Shinwari. "The FATA Area: So Near Yet So Far Away". Retrieved on September 8, 2005 from <http://www.khyber.org/pashtoplaces/fataareas.shtml>

Sufaid.²² The Kurram valley is the most extensively cultivated agricultural land in the FATA.

3. The Southern Region

This region is bounded by Gomal River in the south, Kurram River in the north, and the Durand Line in the west. This region consists of North and South Waziristan and the Frontier Regions of Dera Ismail Khan, Tank, Bannu, and Lakki. Most of the area is not suitable for agriculture and has no major industry.

C. TRIBAL CULTURE

1. General

Frontier tribes have evolved an ancient and traditional culture of their own. The tribal law, called Pashtunwali Code, is their constitution, which shapes and regulates the lives of the tribal people. The Pashtunwali Code is presentation of typical tribal virtues, encompassing *milmastia*, which means showing hospitality and protection to every guest; *nanawati*, the law of asylum, according to which asylum must be given even to bitter enemies if they come as supplicants; *badal* (revenge) which imposes the responsibility of wiping out an insult with an insult; and *paighor* (taunt) in which, a person is pushed to a limit by taunting and calling him coward that he takes the revenge.²³ However, *tarboorwali* (cousin rivalry) and *tor* (upholding female honor) appear to be the two main features through which Pashtunwali is interpreted, enacted, and judged in society.²⁴

Pashtunwali exercises a great influence on the actions of the tribal people and has been held sacred by them for generations. The non-observance of the customary code is considered disgraceful and may lead to the expulsion of an individual or even an entire family from the social setup of a region. In broader sense

²² The Koh-e-Sufaid is a range of mountains between the River Indus and the Hindu Kush. The Hindu Kush is a range of mountains known as the Indian Caucasus. It is also described as a flat-backed watershed which often falls to less than 17,000 feet above sea level. It is the westward continuation of the Karakoram Range, a single range that runs from Tibet to Afghanistan. The main range of the Hindu Kush forms the Pakistan – Afghanistan boundary. S. Iftikhar Hussain. *Some Major Pukhtoon Tribes along the Pak-Afghan Border*. Pan Graphics (Pvt) Ltd., Islamabad, 2000. 177-181, and, Badshah Gul Wazir and Jehangir Khan Muhammad. *Futuristics of Tribal Administration*. Pakistan Academy for Rural Development, Peshawar, 1995.131.

²³ S. Iftikhar. *Some Major Pukhtoon Tribes along the Pak-Afghan Border*, 20-27.

²⁴ S. Akbar Ahmed. *Religion and Politics in Muslim Society. Order and Conflict in Pakistan*. Cambridge University Press, 1983. 24.

hospitality, magnanimity, chivalry, honesty, uprightness, patriotism, love and devotion for the country make up the essential features of this code.²⁵

The code revolves around the institution of *jirga*, a council of local elders which has traditionally managed to resolve disputes. Their politics are also a reflection of tribal culture, which does not allow them to accept change without reservation. Rather, they resist change. Their political and cultural structures are simplistic, but cater to their socio-political needs. Tribal *jirga* and the institution of *maliks*²⁶ make up the core of their political life. In fact, according to the Pakistan government's official FATA website, "around 30 percent of the total area of the FATA was inaccessible politically and around 50 percent was inaccessible physically."²⁷

2. Pashtunwali Code

a. *Milmastia (Hospitality) and Badal (Revenge)*

Milmastia means the showing of hospitality to all visitors. It enjoins the obligation of protection as well as nourishment. *Badal* permits no limitation on revenge in time or space and permits revenge regardless of cost or consequences. Blood feuds and enmities at times extend over generations. Pashtuns of the FATA are very intelligent in the art of give and take, which is so quite explicit in the traditions of hospitality and revenge. At some point, they may be generously hospitable. At another point, they may be so vengeful that no power could protect the offender from their grasp. The culture of hospitality and shelter has been used strategically against the government to achieve desired advantages.

b. *Nanawati (Protection/Asylum)*

Nanawati means to go in and seek forgiveness from the victim to whom a wrong has been done. It is used when the party at fault is prepared to go

²⁵ Quraysh Khattak, "A Matter of Tradition". Retrieved on July 20, 2005 from <http://www.jang.com.pk/thenews/mar2004-weekly/nos-14-03-2004/spr.htm#top>

²⁶ The honorific of Malik is confined to Pathan notables. Malik is a common Arabic word denoting a king or prince, and is in common use for elders throughout the Afghan tribes.

²⁷ Government of Pakistan, Federally Administered Tribal Area, "Inaccessible Areas". Retrieved on May 19, 2005 from <http://www.fata.gov.pk/inaccessible.html>

into the *hujra* (house) of his enemy to beg forgiveness and make peace with him, usually with the Holy Quran in hand.

Tribal areas are a refuge for criminals and offenders in the name of the Pashtunwali Code. Keeping and displaying light and heavy weapons is the custom of the area. A few extremist religious madararas which were operating in these areas played a vital role in turning normal people into Muslims preaching extremism and conducting acts of terrorism. Tribal areas became a safe haven for kidnappers, murderers, drug traffickers and terrorists, including Taliban and Al-Qaeda members. The tribal areas provide sanctuaries to the traitors, rebels, and other fugitives from the law. It is a fact that because of the terrain, many areas are beyond the reach of law enforcement agencies. Due to the FATA's inaccessibility, many criminals take protection in these areas; in some instances gangs operate with impunity.²⁸ In the NWFP, "out of 16,988 registered proclaimed offenders, 99 percent have taken shelter in Darra Adam Khel, Orakzai Agency, Kurram Agency, and Khyber Agency."²⁹ The Pashtunwali Code has mostly been used for earning money. In the complex tribal culture, declared criminals have to pay a fixed amount of money to the *maliks* for refuge. This payment forces them to indulge in all kinds of misdeeds to earn enough income to feed their families and also to pay the required amount to the *maliks*.

D. CONSTITUTIONAL AND LEGAL ASPECTS

1. Continuation of British Treaties

Mr. Ghaffar Khan, one of the main leaders of the tribal areas, proposed three conditions to Quaid -i- Azam Muhammad Ali Jinnah (the founder of Pakistan) for extending cooperation towards Pakistan in June 1947 at Delhi. One of the three³⁰ conditions was the merger of tribal areas with the settled areas of

²⁸ Javed A. Khan. "Haven on Earth". Retrieved on July 20, 2005 from <http://www.jang.com.pk/thenews/mar2004-weekly/nos-14-03-2004/spr.htm#top>

²⁹ Sultan Shahin. "Islamabad's Plan to Tame Tribal Areas". Retrieved on January 12, 2005 from <http://www.jammu-kashmir.com/insights/insight20011201b.html>

³⁰ The other two conditions were that the state of Pakistan should withdraw from the Commonwealth, and full provincial autonomy should be granted to NWFP. Dawn, December 23, 1969 and Noor, Rashid, and Maqsood. *Federally Administered Areas of Pakistan*. 20.

NWFP.³¹ The Jinnah had a positive reaction to the proposal, but died before any decision could be reached.

After partition, the new state of Pakistan was to enter into fresh agreements and treaties with the tribal chiefs. The *maliks* wanted to include terms and conditions to guarantee the rights and privileges they had enjoyed under the British. Pakistan at the time of independence faced a host of problems. The political leadership that succeeded Jinnah chose to continue the treaties, agreements, and allowances between the British and the border tribes, refraining from interference with their traditional tribal freedom. The basic understanding was that internally, the area would remain autonomous, and the government of Pakistan would look after the area's external security and development. The aim was to gradually improve the tribal areas economically so that over time they could play a major role in the mainstream of the nation.

2. Implication of Laws

At Pakistan's inception, the tribal elders unanimously agreed to show faithfulness to the central government of Pakistan on the condition that they maintain their autonomy. Since that time, they are territorially part of Pakistan, but they are administratively autonomous, acting through a Political Agent (PA) who coordinates with the federal authority. The Pakistan constitution specifies that "Neither the provincial parliament nor the governor has any authority in the FATA, nor does the National Assembly without the President's consent."³² The laws of Pakistan are not enforced in the tribal areas; since 1872, a unique set of laws, the Frontier Crimes Regulations (FCR), have been in force.

3. Constitutional and Legal Aspects

The first constitution of Pakistan went into effect on March 23, 1956. Although it provided for a parliamentary government, it did not change the political and administrative setup of the tribal areas.³³ Under Article 247 of the

31 Noor, Rashid, and Maqsood. *Federally Administered Areas of Pakistan*. 20.

32 Constitution of Pakistan. "Chapter 3, Article 247, Section 2". Retrieved on January 18, 2005 from http://www.nrb.gov.pk/constitutional_and_legal/constitution/part12.ch3.html

33"1956 Constitution of Pakistan". Retrieved on May 24, 2005 from <http://www.storyofpakistan.com/articletext.asp?artid=A060>

1973 Constitution,³⁴ central and provincial laws could not be applied due to the peculiar conditions and problems of the tribal areas.

While tribal areas were defined and outlined in Article 246 of the constitution, at the same time these areas were excluded from the domain of fundamental human rights and equal protection of law guaranteed to every citizen under Articles 25 to 28, Part II, Chapter 2 of the Constitution.³⁵ Article 247 renders these protections for human rights and equal treatment under the law null and void in the tribal areas, and explains the working parameters of the tribal areas' separate administrative system. Under this arrangement, the president is not only the constitutional figurehead but also the chief executive of the tribal areas. Under Article 247, the president has the exclusive authority to decide which law will be applied to tribal areas. *The irony is that on one hand, the central and provincial laws are not applied to the tribal area, and on the other, the executive authorities of the president and the provincial governor are extended to the area with no legal authority.*

Article 51 (6) of the constitution empowers the president to extend the electoral system based on adult franchise to tribal areas. Article 51 (6) reads: "Notwithstanding anything contained in this article, the president may, by order, make such provisions as to the manner of filling the seats in the National Assembly allocated to the FATA as he may think fit."³⁶ Even the abolition of tribal areas and their merger with a province is a simple process if the leadership were to want it. Article 247 (6) very clearly defines the presidential powers to abolish tribal areas without any constitutional amendment. Abolition can be accomplished by a simple presidential order. The article says:

The President may, at any time, by order, direct that whole or any part of tribal area shall cease to be tribal area and such ordinance

³⁴ Constitution of Pakistan. "Chapter 3, Article 247, Section 2".

³⁵ "Constitution of Pakistan". Retrieved on August 20, 2005 from <http://www.pakistani.org/pakistan/constitution/> and Part II of the Constitution. "Fundamental Rights and Principles of Policy". Retrieved on August 20, 2005 from <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>

³⁶ Constitution of Pakistan. "Part XII, Chapter 3, Tribal Areas". Retrieved on August 21, 2005 from <http://www.pakistani.org/pakistan/constitution/part12.ch3.html>

may contain such incidental and consequential provisions as appear to the President to be necessary and proper. Provided that before making any order under this clause, the President shall ascertain in such manner as he considers appropriate, the views of the people of Tribal Areas concerned as represented in tribal Jirga.³⁷

According to the Constitution, neither the Supreme Court nor the High Court exercises any jurisdiction in relation to tribal areas, unless Parliament authorizes the laws.

E. CONCLUSION

Every state has a duty to improve the living standards, bring economic changes, and provide basic civic and health facilities for the people under its care. It is not expected that a state would abandon the people of a specific area just because it would be difficult to change a centuries-old system. The British adopted a policy aimed at serving their colonial interests, but Pakistan is an independent country and the people living in FATA are its own people. The policies implemented by the British must be discarded, as they have brought no good to the area; in fact, the situation has deteriorated. To achieve security within Pakistan and fight GWOT with an improved approach, the future of the tribal areas must be seriously discussed and debated. As long as these areas retain their self-ruling status, they will serve as a hiding place for criminals and a stronghold for the Taliban and Al-Qaeda members.³⁸

The constitution of Pakistan as a whole, for all practical purposes, is a inconsistent document in regards to its applications to the FATA. Consequently, under the constitution, the people of the FATA have neither general human right nor can they claim any other status, privilege or position conferred upon other

³⁷ Constitution of Pakistan. "Part XII, Chapter 3, Tribal Areas".

³⁸ Irfan. "The Untamed Frontier".

citizens of Pakistan. The implications are obvious. The FCR,³⁹ notoriously known as the "black law" and an instrument of the colonial rule, still reigns supreme in the FATA.

Since Pakistan's independence, these political dynamics have essentially gone unchallenged. However, in recent years the shelter provided in tribal areas to the so-called "guests" (Taliban and Al-Qaeda) backfired, bringing down the wrath of the government against the tribal elements.

³⁹ The Frontier Crimes Regulations (FCR) were promulgated in 1872 and revised in 1887 and 1901. The FCR were introduced by the British for special trial procedures that excluded the technicalities of ordinary law. Under FCR an innocent person could be sentenced to 50 years imprisonment without trial, which is unfair and in violates human rights. Family members are handed a jail term for no crime of their own under FCR. Innocent people are sentenced to jail for the alleged crimes of their father, uncle or any blood relative. It is the government that launches operations against these innocent people if they cannot produce the accused person. Under the FCR, the government can raze the houses of criminals and their relatives to the ground as a punishment. The FCR allows the political agent to imprison or impose penalties of thousands of dollars on anybody he thinks has violated the law or endangered the peace of the region. It is a draconian law against tribal people, giving excessively vast and arbitrary power to the political agent and commissioner. For more details see Talat Sattar. "A Draconian Law against the Tribal People". Retrieved on May 19, 2005 from <http://www.pakistanlink.com/Opinion/2005/Jan05/14/11.htm> and "Frontier Crimes Regulations (FCR) Black Law". Retrieved on May 19, 2005 from <http://www.parachinar.com/>

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III. TRIBAL ADMINISTRATION

A. ADMINISTRATION SYSTEM ESTABLISHED BY THE BRITISH

1. Introduction

This chapter focuses on the aspects of administration followed by the British and the administrative system currently being followed by the Pakistan government. It critically analyzes both administrative systems to draw conclusions for the recommended administrative system for the tribal areas.

The administration of NWFP under the British rule had two aspects: the management of the tribes to ensure the security of settled areas, and the civil administration of the settled districts. Though the British managed to fix their final boundary as the Durand Line, effective control by the British Government remained confined to the settled districts and could not expand beyond that. To ensure effective control over the tribal areas, the British tried different policies, known as the Close Border policy, the Forward policy, and the Modified Forward policy. A clear understanding of these policies is essential for charting future policy guidelines for the FATA. First, however, another aspect of British policy, the "Great Game," requires some explanation. Salient details of the Great Game⁴⁰ are as follows.

In 1757, Britain began its empire-building on the Indian subcontinent in earnest. At about the same time, the Russians turned their attention to central Asia. As the British pushed north, the Russians moved south toward the line of the river Oxus. The two Afghan wars of 1838 and 1878 were aimed at extending British influence up to the line of the river Oxus. When Russia began the southward drive, the British Empire became concerned about dealing with the Russians. In 1879, the English and the Russians decided to solve the issue

⁴⁰ "The Great Game". Retrieved on September 6, 2005 from http://en.wikipedia.org/wiki/The_Great_Game#The_Great_Game_Renewed and http://en.wikipedia.org/wiki/Second_Anglo-Afghan_War#The_Great_Game

Peter Hopkirk. *The Great Game: The Struggle for Empire in Central Asia* (1994); Karl Meyer and Shareen Brysac. *Tournament of Shadows: The Great Game and the Race for Empire in Asia* (2001); and Azmat. *The Durand Line its Geo-strategic Importance*. 53-145.

diplomatically. Afghanistan was accordingly recognized as a buffer state between the two, with the Oxus River established as the boundary between Russia and Afghanistan. In 1887, the Russians came too close to Kashmir, necessitating yet another boundary commission. This extended the Oxus line eastward and created the narrow strip of Wakhan Afghan boundary with the subcontinent. The Durand Line was demarcated in a similar manner in 1893.

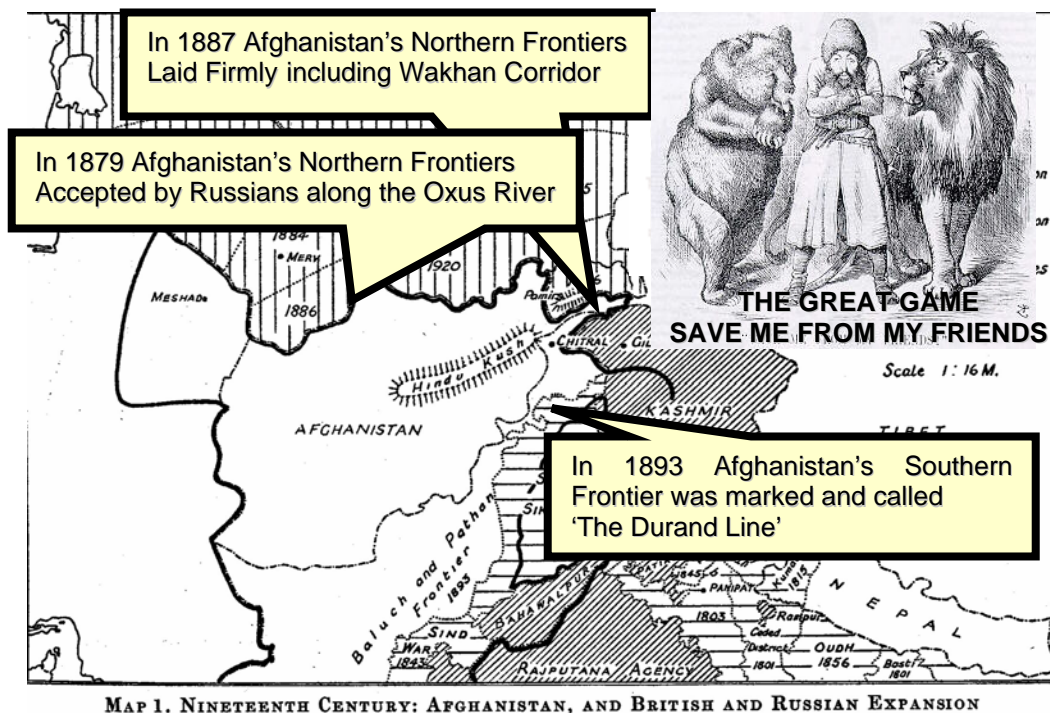


Figure 3. The Great Game⁴¹

⁴¹ "The Great Game". Retrieved on October 24, 2005 from <http://en.wikipedia.org/wiki/Image:Greatgamecartoon.jpg>

2. Various Policies Implemented by the British⁴²

a. Close Border Policy

The Close Border policy meant direct British rule in the settled areas only. The tribes were to administer their affairs, keep the trade routes open, and above all to ensure peace on the border. Other measures were also adopted to reconcile with the tribes, which included:

- (1) Withdrawal of taxes and frontier duties imposed by Sikhs.
- (2) A system of free trade.
- (3) Construction of roads between the limits of un-administered areas and the settled areas.
- (4) Free medical treatment.
- (5) Jirgas were encouraged to enter British areas to settle disputes.
- (6) Ranks of police and army were opened to the tribesmen.
- (7) Tribal areas were treated as an outside zone and tribesmen were confined to their areas through a chain of posts and cantonments strung around it.

In essence, this policy aimed at protecting the administered area from tribal raids. Non-aggression and non-interference in tribal affairs were the pronounced objectives of the policy. Agreements were made with the tribesmen obliging them to maintain peace. These promises were frequently broken. On such occasions the British would resort to stopping allowances, imposing fines, or blockades. And when all else failed, expeditions were sent to the tribal territory. This policy was abandoned in 1876 in favor of another, known as the Forward policy.

⁴² Olaf. *The Pathans*. 346-389, Azmat. *The Durand Line its Geo-Strategic Importance*. 64-102, Noor, Rashid, and Maqsudaul. *Federally Administered Areas of Pakistan*. 8-12, And Badshah and Jehangir. *Futuristics of Tribal Administration*. 1995. ix.

b. Forward Policy

The Forward policy meant control of natural frontiers. This policy was aimed at the physical occupation and direct administration of the area. It was formulated against the backdrop of Russian advancement, which challenged British supremacy in south Asia and demanded recognition of the need to defend India. Different viewpoints were expressed about how far west and north the British should go: the river Oxus line, the Hindukush line or the Kabul-Ghazni-Kandhar line. It was the last which the British decided to occupy in case of Russian moves towards India.⁴³



Figure 4. Northern and Western borders of Afghanistan and Wakhan Corridor.⁴⁴

For implementation, it was essential to control various passes in tribal areas of NWFP and Balochistan and also to improve communications. Control of the Khyber Pass was achieved in 1878. PAs were created as units of administration in tribal areas. Some measures were initiated for implementing the

⁴³ The British were in actual occupation of the cities of Kabul, Ghazni, and Kandhar in 1878-80. "The Great Game". Retrieved on September 6, 2005 from http://en.wikipedia.org/wiki/Second_Anglo-Afghan_War#The_Great_Game

⁴⁴ Northern and Western borders of Afghanistan and Wakhan Corridor. Retrieved on October 24, 2005 from http://www.kokhavivpublications.com/help/maps/images/afghanistan_map.gif

Forward policy, including construction of forward garrisons, improvement of communication infrastructure, investment in tribal areas, and the introduction of *maliki* system⁴⁵ in 1889-90. *Maliks* were also to provide tribesmen for the militia and the levy force.

This policy succeeded in Balochistan, but did not produce the desired results in the NWFP, as the tribesmen interpreted it as a challenge to their freedom. The tribesmen reacted sharply to the Forward policy, culminating in a general uprising against the British. Suppressing the great tribal uprising of 1897 required the use of over 70,000 troops. After enormous loss of men and materiel, the British were left with no alternative but to reevaluate the policy.⁴⁶

c. Modified Forward Policy

Upon his arrival as new Viceroy of India in 1899, Lord Curzon modified the existing policy. More than 70,000 troops employed in the tribal areas were withdrawn to the settled areas. Levies and scouts were recruited from among the tribesmen (though commanded by British officers) to ensure control through tribesmen and instill discipline through close contact. The militia, however, was backed up by the regular troops as required. This policy was an attempt at developing intimate relations, improving the economic conditions of the area, and at the same time gradually acquiring an influence over the tribal people.

A new province, the NWFP, was created in 1901 to separate the administration of the frontier from the Punjab. A chief commissioner was appointed as agent to the governor general. The new province was divided into two parts, the settled districts and the tribal areas.

⁴⁵ Pro-government and pro-administration tribal elders are nominated by the PA to exercise strong hold and influence on the tribes. The maliks work as intermediaries between the administration and the *Qaum* tribe. The British did not subjugate the tribes by force alone and therefore the maliki system was introduced, which sent a message to the tribes that anybody loyal and accommodating would have a special status, and also signaled that cooperation with the government would entail regular benefits, recognition and influence in the tribe. A maliki is hereditary and devolves on the son, and his son, and so on. Badshah and Jehangir. *Futuristics of Tribal Administration*. 131.

⁴⁶ Ibid. ix.

3. Administration

A PA was appointed for each agency to separate its administration from that of the province's settled districts. A chief commissioner was appointed for the tribal areas. He was the sole representative of the tribal people and an agent of the governor general. As such, he had a direct contact with the tribes and local political officer. PAs were directly answerable to the chief commissioner; the militias were also placed under him. Later on, the chief commissioner post was converted into that of the governor. Thus the governor of NWFP became the agent to the governor general, who in turn was responsible to the British crown.

4. Honor and Award

The policy of "divide and rule" worked well for the administration of the tribal areas under the British. The negative characteristics of Pashtun culture were fully exploited to achieve ulterior motives. *Jagirs*, subsidies and honorific titles were bestowed upon one brother for exploitation against the other.⁴⁷ The agencies were put under a separate setup of tribal administration where a PA's carrot and stick policy successfully legitimized power over tribal affairs through a selective class of tribal elders, known as "maliks, khans, and arbabs."⁴⁸ Every *malik*, representing a tribe or sub-tribe, was appointed by the PA, who, in exercising absolute powers of reward and punishment to run the agency affairs, could nominate anyone for malikship. "The almost classless Pashtun society was divided into 'haves and have nots' and the common man became poorer, inferior, and relegated to sub-human status."⁴⁹

5. The Judiciary and the Jirga System

The unwritten law is that the *jirga* makes decisions in civil and criminal cases involving the tribe, and these are accepted as unanimous decisions. *Jirga* is a traditional institution for administering justice by the customary methods of settling quarrels arising from blood feuds, disputes about women and questions affecting Pathan honor in general. The *jirga* reaches the verdict in one sitting and

⁴⁷ Badshah and Jehangir. *Futuristics of Tribal Administration*. 111, and Shaid Javed Burki, *Pakistan: A Nation in the Making*. Boulder: West View Press, 1986. 70

⁴⁸ Olaf. *The Pathans*. 8

⁴⁹ S. Iftikhar. *Some Major Pashtun Tribes along the Pak-Afghan Border*. 1-19.

the offender is prosecuted. This is in sharp contrast to the slack judicial system enforced in the rest of the country. The *jirga*'s quick delivery of justice has convinced the tribal people of the famous saying, "Justice delayed is justice denied." The British government modified the *jirga* system and enforced it both in the tribal and the settled areas of the political agencies. Under the revised version, a *jirga* was to consist of not less than three persons. The magistrates were given the power to withdraw such cases from the ordinary courts and submit them for arbitration by a *jirga*. In such cases, *jirga* did not mean all the *maliks* and elders of a tribe acting in conclave as a deliberative body. It was instead a group of elders, designated by the magistrate and acceptable to both parties to a dispute, who were required to give a finding as to the guilt or innocence of the accused. In other words, the *jirga* was a sort of a tribal jury. It was not bound by the laws of evidence, and could use its own methods and enquiries to state the facts and reach a solution.⁵⁰ The FCR, an unusual judicial system which consisted of a separate set of laws, was introduced in the tribal belt. These regulations authorize the deputy commissioner or the PA to refer all criminal and civil cases to a *jirga*.

6. Collective Responsibility

As per the FCR, the system of administration was and still is based on the principle of "collective responsibility" (the territorial and soil responsibility) of a tribe. When a crime takes place in an area within an agency, it becomes the collective responsibility of the tribe to turn over the culprit(s) to the administration or to face punishment and suspension or stoppage of allowances and salaries as a tribe. The tribe's commercial interests can be targeted, by closing their shops or confiscating their transport. Depending on the nature and seriousness of the crime, the salaries of the teachers or other government or public employees can be stopped and the houses of the tribal people razed.

7. Tribal Levies and Militia

The British wanted to occupy strategic passes in the tribal belt and areas beyond with the ultimate aim of obtaining full control over the passes of Hindu

⁵⁰ Olaf. *The Pathans*. 353

Kush and the northwest frontier, threatening the very survival and independence of the hill tribes.⁵¹ This brought the first ever combination of all tribal factions against the British. The British soldiers were no match for their unexpected unity, stamina and endurance. The cost of keeping a large army on the Hindu Kush had significant effects on both the Indian and British economies. Lord Curzon, the Viceroy of India, withdrew British troops from the affected agencies and replaced them with newly-raised militias from the tribal belt to avoid interference within tribes. Tribal levies, militias and *khassadars*,⁵² recruited from local tribesmen, were raised to assist the PA in policing the area and establishing peace and security.

8. Control by Central Government

In 1877, Lord Lytton, the Viceroy of India, wanted the northwest frontier areas under the direct control of the central government instead of the provincial government of Punjab. To establish direct control, a system of political agencies⁵³ was introduced in the tribal belt between the Kabul and the Gomal rivers. Districts were the administrative units in the British India; agencies were created in the tribal area. The administrative control of an agency was entrusted to a PA who was an equivalent of the deputy commissioner of a district. The Agent was required to liaise with the tribes in the area of his jurisdiction. During that time the tribesmen were considered British subjects and the government

⁵¹ Azmat. *The Durand Line its Geo-Strategic Importance*. 101 and Lytton to Salisbury, July 16, Lytton Papers, C.R.O. Record.

⁵² The Sandeman system or khassadar system was named after Sir Robert Sandeman, who was appointed the first agent of the Governor General in Balochistan. He used local tribes for the purposes of policing the tribal area. He recruited tribesmen and formed Khassadar Regiments. These regiments took the place of the British Army in tribal areas. Large subsidies were paid to the tribal maliks. These maliks had to perform certain difficult duties such as protecting merchants, keeping roads open and, in case of trouble, finding out the troublemakers. The system of khassadars, or tribal police, was somewhat successful in Balochistan. It was designed to give monetary benefits to the tribesmen under the supervision of maliks, in return for maintaining order in the tribe. The khassadars are an important form of patronage. They provide their own guns and ammunition to protect roads and other government installations. The khassadars man the checkpoints where the tribesmen deposit their guns before leaving for the settled areas and pick them up again on returning to the tribal areas. S. Iftikhar. *Some Major Pukhtoon Tribes along the Pak-Afghan Border*. 18.

⁵³ The Khyber Agency was established in 1878, the Kurram and Malakand Agencies in 1892, the South Waziristan Agency in 1895, and the North Waziristan Agency in 1896.

was theoretically responsible for defending them in case of attack from outside. However, they were practically independent in the management of their internal affairs.⁵⁴

9. Conclusion

The entire political administrative apparatus was tailored to suit colonial objectives. The system introduced in the tribal areas was not development-oriented, nor did it provide for the needs and requirements of the common man. The British raj did not consider it possible or desirable to merge the tribal areas with the settled districts of Punjab or NWFP. Hence the laws of normal administration were not extended to these areas, which therefore retained a semblance of internal autonomy. The British did not interfere in tribal disputes or affairs. Revenue and taxes were not charged and cross-border trade, transit and movement were not restricted. A system of government subsidies was introduced, in return for which the tribes promised to protect certain routes and abstain from raiding British settled areas. The age old *jirga* system remained intact to settle personal issues, disputes among the tribes, and to redress grievances and punish those at fault. In the FCR, extreme powers and inhuman clauses were added to safeguard British interests and to make the PA the final and supreme authority.

B. ADMINISTRATION SYSTEM OF PAKISTAN IN THE FATA

1. Introduction

Although the administrative system inherited from the British was highly anomalous, Pakistan continued with that system and adopted all the treaties made by the British with the tribal people. The institutions of PA and *malik* reign supreme. The FCR still decides the fate of people, but there is definitely a change in the tribesmen dealings with the government. The PA has become more development oriented, rather than focused on fulfilling the wishes of colonial masters.

⁵⁴ Azmat. *The Durand Line its Geo-Strategic Importance*. 23-25, And Noor, Rashid and Maqsdaul. *Federally Administered Areas of Pakistan*.

2. Tribes Opted for Pakistan

In June 1947, the final transfer of power was announced by the British Prime Minister. Lord Mountbatten accordingly announced a referendum in the NWFP, and the Frontier Province, with every sign of enthusiasm, became part of Pakistan on August 15, 1947. Like NWFP, all the tribes up to the Durand Line and the four princely states of NWFP (Dir, Swat, Chitral and Amb) opted to join Pakistan in November 1947.⁵⁵ It may be of interest to note that shortly before the transfer of power, Afghanistan raised untenable claims to a new international border extending as far as the Arabian Sea. All-out efforts were made by the Afghan government to subvert the loyalties of the tribes, but in vain.

3. Agreement with Tribesmen

The Pakistan government decided to abide by the treaties, agreements and allowances to the people of the tribal areas in order to keep from interfering with their traditional freedom. The tribal people were allowed to retain their autonomy and independence. Mr. Jinnah, while speaking to a grand tribal *jirga* on April 17, 1948 at Governor House, Peshawar, said,

I am fully aware of the part that you have already played in the establishment of Pakistan, and I am thankful to you for all the sympathy and support you gave me in my struggle and fight for the establishment of Pakistan. Keeping in view your loyalty, help, assurances and declarations we ordered the withdrawal of troops from Waziristan as a concrete and definite gesture on our part that we treat you with absolute confidence and trust.⁵⁶

In the same address, Jinnah guaranteed the customs, traditions and way of life of the tribesmen by declaring, "Pakistan has no desire to unduly interfere with your internal freedom."⁵⁷

4. Control by the Federal Government

There are three reasons why control over the FATA has been entrusted directly to the federal government.

⁵⁵ Olaf. *The Pathans*. 435.

⁵⁶ Amir Usman. "Military Operation in Waziristan". Retrieved on September 5, 2005 from <http://www.dawn.com/2005/05/02/op.htm#2> and "Jinnah Speeches and Quotes" retrieved on September 5, 2005 from http://www.quaid.gov.pk/quotes_quaid.htm

⁵⁷ Ibid.

a. In view of the sensitive nature of the Durand Line as an international border between Pakistan and Afghanistan, the federal government wanted to look after security issues in these areas. Because of the fragile nature of Pakistan-Afghanistan relations in the early years, the Pashtunistan⁵⁸ issue, and the ethnic-based nationalist politics in the NWFP, the federal government wanted to retain the control of the FATA.

b. Tribal areas are the poorest and most underdeveloped region of Pakistan. To bring tribal areas up to par with the settled areas of the NWFP required a massive effort to initiate development work which could only be undertaken by the federal government.

c. In a grand tribal *jirga* at Governor House Peshawar on April 17, 1948, two hundred *maliks* pledged their allegiance to Pakistan and unanimously requested to be placed under the direct administration of the central government.

It must be said that there was no fundamental change in the policy of the government in regards to the administrative and political structure of the tribal areas. The government of Pakistan continued to deal with *maliks* through the PAs instead of establishing contacts with the people at the grassroots level. The system of allowances and subsidies continued.

5. Administrative Authority

In a parliamentary form of government, the prime minister and the cabinet have the executive power to rule, and the president is the symbolic head of the state. But in case of FATA, it is the president who enjoys the executive power to rule over the area. The president has delegated his authority to the governor of the NWFP. Quite paradoxically, while these areas fall under the jurisdiction of central government, practically speaking, it is the provincial governor who administers them. The incongruity in the whole system applied to tribal areas is

⁵⁸ For more than fifty years, the relationship between Pakistan and Afghanistan has been a characterized by rivalry, suspicion, and resentment. The primary cause of this hostility is Afghanistan's demand for Pashtunistan, which was put forward immediately after the emergence of Pakistan. The argument advanced by Kabul, that the Durand Line cannot represent the international frontier and at any rate lapsed with the 1947 transfer of power, has given rise to a claim that Pashtunistan, the land of the Pashtuns, lies on both sides of the Durand Line. Olaf. *The Pathans*. 381.

that none of the legal aspects which are applicable to the rest of the country are applicable to these areas, yet it is the executive authority of the president and the provincial governor that reign supreme.

6. Political Agent

The PA is the linchpin around which revolves the entire agency's administration. Each agency has its own PA, who runs the administration with the help of an assistant political agent, tehsildars and naib tehsildars. To maintain law and order, the PA has a substantial force of *khassadars* and militia or scouts employed to secure the communications infrastructure and patrol the border areas.⁵⁹ He is accountable to the provincial governor, who also acts as an agent to the president for tribal areas.

The PA's main duties are to keep general peace, maintain the roads and protect government property. He plays multifaceted role. As an executive he ensures law and order in the area, collects revenues and taxes, has approval over rural development plans, and performs judicial duties under the FCR. He disburses, at his discretion, various allowances and secret funds to tribesman for political work. He also approves scholarships, rations and domicile certificates. Under his signature, the charcoal and timber permits are issued.⁶⁰ Great powers have been vested in him to coerce, to patronize and to affect honor and authority in implementing policy.

The character and wisdom of a PA are important in the political handling of the tribes. The PA usually does not interfere in the affairs of the tribesmen and intervenes only when a grave situation arises. He exercises his influence in case tribal hostilities break out. The success of a PA largely depends upon his personal influence and ability to tackle difficult situations while remaining neutral. Dissatisfaction with the PA, or his junior field officers, is expressed by sniping, explosions on government property and even kidnapping. No major changes have been made in the system since Pakistan's independence and the authority of PA and *maliks* are exercised unchallenged in the area.

⁵⁹ S. Iftikhar. *Some Major Pukhtoon Tribes along the Pak-Afghan Border*. 3.

⁶⁰ Noor, Rashid, and Maqsudaul. *Federally Administered Areas of Pakistan*.

7. Application of FCR

The FCR gives excessively great and arbitrary powers to the PA and the *nazims*.⁶¹ Before the creation of Pakistan, the British government used to appoint experienced and selected officers in agencies who invoked provisions of the FCR regulation sparingly and administered justice in a fair and equitable manner. Unfortunately, the prevailing state of affairs is completely reversed. The tribesmen have lost confidence in the political officers and the administration. Rules are being applied arbitrarily and not observed in administering justice under the FCR. In accordance with the rules, the PA has to refer every case invariably to *jirga*; he also considers any objections of the parties involved to the nomination of members of the *jirga*. The PA has to accept the decision of the *jirga* or else refer the matter to a fresh *jirga* if he does not feel inclined to accept its findings and recommendations.⁶² Contrary to the provisions of law, now the PA mostly decides matters through executive orders, without hindrance.

8. Pakistan – Afghanistan Relations

The relations between Pakistan and Afghanistan were marked with hostility from the very beginning. Afghanistan was the only country to oppose Pakistan's entry into the United Nations in 1947. According to the stand taken by the government of Afghanistan, all the Pashtuns, whether they lived in Afghanistan or Pakistan, constituted one nation and should be united under the leadership of Afghanistan. The demand for a separate and independent state of Pashtunistan, raised by successive governments of Afghanistan, is based on the claim that Pashtuns form one nation due to their common ethnicity, language, geographical proximity, culture and traditions. Afghanistan has been contending that the Durand Line, which forms the international border between Pakistan and Afghanistan and divides the Pashtuns in two, was forcibly imposed upon them and was accepted only under pressure. Pashtunistan has long been the flashpoint for the two countries. Supported by left-wing groups in Pakistan, Kabul

⁶¹ With the devolution plan, in 1998 the office of Commissioner was eliminated and the office of Nazim was introduced.

⁶² "Frontier Crimes Regulations (FCR) Black Law". Retrieved on May 19, 2005 from <http://www.parachinar.com/>

advocated a Greater Pashtunistan. The Afghan war changed the Afghans' perception, and they became sympathetic toward Pakistan during and after the Russian invasion. The Afghans' feelings of unfriendliness for Pakistan utterly vanished for domestic political and economic reasons. According to Sir Olaf Core,

The lure of Peshawar has also been a passion, deep in hearts of the ruling family of Afghanistan being direct descendents of Peshawar *Sardars* (leaders). The Afghan government transferred these desires into formal claim with the demission of British authority. Subsequently this claim transferred into different meanings of creation of a separate Pashtuns State, to be carved apparently out of Pakistan, in such case no overt demand of political amalgamation with Kabul. At the same time, Afghanistan government affirms that the Durand Line has lapsed with the demission of British power, and this being so, it is impossible to fix a western boundary for its assumed Pashtunistan. Kabul is completely silent on the inclusion of Pashto speaking areas of Afghanistan into this Pashtunistan.⁶³

In the view of the author of this thesis, the Pashtunistan issue provides an opportunity for external elements to exploit an old issue to suit their objectives, particularly against Pakistan. India's determination to outflank Pakistan politically and economically led to a conscious effort to befriend Afghanistan with the realization that any disturbance of the political and security situation on the western frontiers puts Pakistan between two hostile neighbors. Out of this desire for strategic envelopment, India manipulates events in Afghanistan and has consistently supported Pashtun nationalism in a variety of ways. New Delhi's ambitions are facilitated by the presence of many Hindus and Sikhs in Kabul who can rely on their economic networks in India.

⁶³ Olaf. *The Pathans*. 435-436.

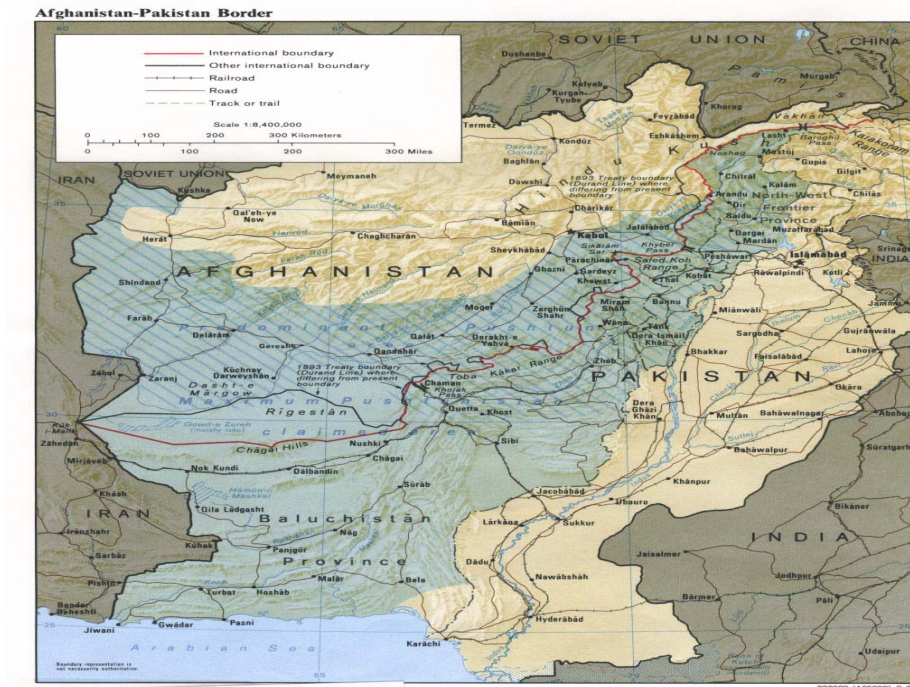


Figure 5. Pashtunistan: The area along Afghanistan and Pakistan border.⁶⁴

9. FATA from Soviet Invasion until Taliban

a. Soviet Invasion

The Afghan war was the biggest misfortune for the FATA. A decade-long war in Afghanistan had a very negative impact on the tribal areas and their infrastructure. With Pakistan becoming the frontline state in the war of resistance against the Soviet forces, the border between Pakistan and Afghanistan virtually ceased to exist. The tribal belt became the main supply route for Mujahideen fighting the Soviets. The tribal areas provided a base for Mujahideen and weapons, supplies, and other war sustenance efforts were routed from these areas.⁶⁵

The arrival of large numbers of Afghan refugees brought an incredible degree of despair to the tribal areas. There was great pressure on the local resources due to sudden and huge increases in population. In some cases,

⁶⁴ Pashtunistan: The area along Afghanistan and Pakistan border. Retrieved on October 24, 2005 from http://www.lib.utexas.edu/maps/middle_east_and_asia/afghan_paki_border_rel88.jpg

⁶⁵ Behroz Khan. "Terror and Territory". Retrieved on July 20, 2005 from <http://www.jang.com.pk/thenews/mar2004-weekly/nos-14-03-2004/spr.htm#top>

refugees outnumbered the local population, severely draining the already-insufficient resources in the social sector. The war also brought a culture of guns and drugs.⁶⁶ During this period, the economy of the tribal areas, which was already underdeveloped, suffered enormously.

The local administration, which already exercised only nominal control over the tribal population, was rendered totally ineffective under the impact of the ongoing war in Afghanistan. The result was that all kinds of illegal activity, like smuggling, drug trafficking and gun running, flourished in these areas.

b. Civil War

With the withdrawal of the Soviet forces from Afghanistan in 1989, there was a bloody war between the Soviet-installed Afghan regime and the Afghan Mujahideen groups. Because security and peace were totally lacking in Afghanistan, there was no question of the Afghan refugees returning to their country. The tribal areas, therefore, continued to be the home of millions of Afghan refugees. Since government of Pakistan's whole attention was focused on Afghanistan, it did nothing to make the writ of the government effective in the affected areas.

c. Taliban Rule

In 1996, Kabul fell to the student militia known as the Taliban. Under Taliban rule in Afghanistan, the writ of the government of Pakistan became even more ineffective. The people from the tribal areas joined the Taliban in fighting against the Northern Alliance. Movement of men and materiel across the international border between Pakistan and Afghanistan was unregulated. The influence of the Taliban has impacted the people of the region in a big way and trends have changed as a result. Several aspects of the FATA's culture have been influenced, and in some cases the traditions of tribal people were adversely affected due to a more conservative interpretation of religion. A

⁶⁶ Hasan Khan. "Not Gone are the Days". Retrieved on July 20, 2005 from <http://www.jang.com.pk/thenews/mar2004-weekly/nos-14-03-2004/spr.htm#top>

large number of people from different regions of Pakistan and the world entered Afghanistan to join what they claimed were *jihad* against the Northern Alliance.

C. CONCLUSIONS

1. Role of Political Agent

A PA was appointed in each agency whose primary function was not to look after the welfare and the people, but to look after the interests of the British crown through domination and persecution. Good governance meant administration of laws through all means, fair or foul, including the harshest possible methods. The task of the PA was to collect intelligence, cultivate informers, create friction amongst the tribes, and keep the lines of communication open between the garrisons maintained in the tribal areas. British law only extended to roads. The rest of the area was not a matter of concern. Control was exercised through tribal levies, *khassadars*, and militia.

With the British gone, the successor PA is no less a colonial master, with some exceptions. Corruption, smuggling, and lawlessness are on the increase. The PA is the executive, the police, the judge as well as dispenser of goodies, permits and development projects. The power vested in the PA has been misused most of the time, which restricts the development and positive changes in the tribal areas.

2. Administrative Arrangement

In the FATA's case, it is the president who enjoys all the powers over the area; he has further delegated his powers to the governor of the NWFP. As per the constitution and the agreements of the *maliks* with the government, the control of the area should be with the federal or central government. The constitution demands that PAs be answerable to the governor of NWFP, who in return is answerable to the president. Here another discrepancy exists: the flow of money, development projects, and politics are controlled through the chief minister of the NWFP, where as all the PAs are dependent and answerable to the governor of the NWFP. Above all, the Supreme Court or High Court of Pakistan has no authority in these areas. People of the FATA, even in the 21st

century, are denied their basic human right to justice. Given so many incongruities, this area was bound to become the “Wild West.”

The existing administrative arrangement for the FATA totally lacks administrative accountability. The PA identifies which tribal *malik* is to be rewarded with a school, road, water supply scheme, etc., and who will serve as the contractor to carry out that development work. While in the adjacent district of the settled areas there is a competitive bidding system for public works projects, people of the FATA are at the mercy of nominated contractors.

3. Soviet Invasion and Thereafter

The tribal areas were neglected by almost all of the governments of Pakistan; they have further deteriorated with the Afghan war, the influx of large number of refugees, and events thereafter. The gun culture and drug trade worsen the internal dynamics of the area. Moreover, the government failed to implement substantial development plans and the writ of the government has become negligible with the passage of time.

D. CONCLUSION

Pakistan is more or less following the same administrative system which was followed by the British. Fifty-eight years after independence, Pakistan has only now seriously started thinking and acting to bring a change to the tribal areas. This is a move in a right direction. The *Jihad* in Afghanistan, the subsequent civil war, guns, drug trade, and the emergence of the Taliban in Afghanistan have all brought changes to the social and cultural fabric of the region. The administrative and political system is now being widely challenged by tribesmen who do not want to remain at the mercy of a few illiterate *maliks* and powerful political agents. On the other hand, educated and democratically-minded people in the tribal areas are in favor of change to ensure that tribal areas are integrated into the national mainstream. However, other elements, based on personal agendas and vested interests, want to hinder such development.⁶⁷

⁶⁷ Telephone conversation with Lieutenant General (Retired) Ali Muhammad Jan Aurakzai on September 23, 2005. He currently performs the duties of Deputy Secretary Defense of Pakistan. He himself is a member of the Aurakzai agency of the tribal areas.

IV. ECONOMIC AND POLITICAL SITUATION

A. INTRODUCTION

This chapter deals with the economic and political situation in the tribal areas. What factors have forced the tribal people to resist changes that might improve their politics and economy? The chapter also describes the economic problems faced by the tribal people, which include agriculture, social services, unregulated cross-border trade, and narcotics smuggling.

Since Pakistan's independence, tribal areas have remained segregated from the state's normal social and economic development projects. The government's policies lacked vision and sincerity, and the absence of good governance, above all, made the tribal areas into the Wild West. Pakistan needs to implement an innovative long-term economic plan to improve these areas so they can be integrated into the mainstream of the country.

B. ECONOMIC SITUATION

1. General

The FATA mostly consists of barren, rugged and inaccessible land. There is hardly any agricultural activity; it has only 190 thousand hectares of cultivated land⁶⁸ which produces only 100 tons of wheat annually for a population of 3.7 million people. The area has practically no industry, except for a handful of privately run enterprises producing small weapons. The widespread unemployment forces many people to become involved in crime or to refuse to pay their taxes. One commentator says, "Large-scale illiteracy and absence of exposure to the outside world strengthen retrogressive tendencies and promote attachment to primitive customs and taboos."⁶⁹ The most significant reason for underdevelopment is that the tribal leaders never allow the government to interfere in their way of life. Obsessively and against all odds, they have

⁶⁸ Rahimullah. "Backyard to the Fore". Retrieved on July 20, 2005 from <http://www.jang.com.pk/thenews/mar2004-weekly/nos-14-03-2004/spr.htm#top>

⁶⁹ Shahin Sultan. "Islamabad's Plan to Tame Tribal Areas". Retrieved on January 12, 2005 from <http://www.jammu-kashmir.com/insights/insight20011201b.html>

protected their independent character. The difficult terrain is another tangible reason why authorities have kept away from the area.

The FATA's economy is agrarian. Those not physically engaged in agriculture are either in the transport business or are supply contractors for various companies. The British made the Pathans into a martial people. To earn a livelihood, young people previously had only the option of joining the armed forces or the Frontier Corps. In the last few decades, considerable progress has been made in education and therefore, one can find quite a few tribal people in white collar professional positions like doctors, engineers, professors, lawyers and high ranking military officers.

2. Social Services

The area lacks basic social services. A survey carried out by the World Health Organization (WHO) in 2001 estimates that 75 percent of the tribal population has no access to clean drinking water. In many cases livestock and people use the same drinking water source (i.e. a pond). About 19 percent of tribesmen use running tap water, 3.2 percent hand pumps, and 35 percent use wells. There are only a handful of metal roads in the area; the lack of roads retards change in the FATA and exposure to the outside world. The male literacy rate in the FATA is 17.42 percent, and the female literacy rate is only 3 percent. The area lacks basic health facilities, averaging only one doctor for a population of 8,189. Out of 100,000 live births, 559 women die due to pregnancy-related complications, while 69 children out of 1,000 die within their first year due to lack of basic health services.⁷⁰

3. Unregulated Cross-Border Trade

The impact of Afghan *jihad* on tribal areas adversely affects the social and economic sectors. The quarter-century war in Afghanistan has fundamentally altered the economy of tribal areas. There is practically no industry to provide job opportunities. People have been dependent on subsistence agriculture; hence a majority of the population is unemployed or underemployed. Due to extreme

⁷⁰ Hasan. "Not Gone are the Days". Retrieved on July 20, 2005, from <http://www.jang.com.pk/thenews/mar2004-weekly/nos-14-03-2004/spr.htm#top>

poverty and lack of economic opportunities, in the past three decades there has been a nearly complete transition from subsistence agriculture to dependence on unregulated cross-border trade of goods, contraband items, and electronics. Some independent economists estimate that such practices account for nearly 40 percent of livelihoods. In the late 1990s, the World Bank estimated the volume of such trade to be the equivalent of nearly two billion in U.S. dollars.⁷¹ "The cross border unofficial trade is a booming business and significant in terms of generating income, providing employment and access to basic goods including food."⁷² The economic situation has regional spillover effects through unofficial trade, narcotics, economic flows, and the movement of people.

4. Opium Production

Afghanistan's post-Taliban opium production has raised a new concern that Pakistan's western neighbor may become an unstable "narco state," with potentially dire results for Pakistan's security. The bumper crop of poppies in Afghanistan strongly affects Pakistan's bid to control drug trafficking with its inadequate resources. "Most of the drugs produced in Afghanistan find its way into Pakistan across the Durand Line and smuggled to European countries via Iran and the Persian Gulf."⁷³ This directly effects the security situation in the FATA, where the economic intentions of people astride the border are visible and efforts to seal the Durand Line may entangle Pakistan and Afghanistan in conflict.

5. Lack of Investment in the Area

Small industries, even cottage industries, would be perfect to improve the economy of the area and provide job opportunities to local people. The administrative system and security situation have discouraged investment in the FATA, and no one has ever seriously thought to convert tribal areas into industrial zones. The key features which keep investors away are the volatile

⁷¹ Abu Bakar. "War on Terror Highlights Development Needs in Tribal Areas". Retrieved on July 20, 2005 from <http://www.afghanact.org/fa/node/view/703>

⁷² Robyn Dixon. "Opium Production Spreading in Afghanistan". Los Angeles Times, October 5, 2003. Retrieved on March 27, 2005 from <http://opioids.com/afghanistan/opium-economy.html>

⁷³ "Pakistan Bearing Brunt of Poppy Cultivation in Afghanistan". Dawn, March 23, 2005. Retrieved on April 12, 2005 from <http://www.dawn.com/2005/03/23/nat13.htm>

security situation, lack of skilled labor, non availability of raw material, and the collective responsibility of the tribes. The system of collective responsibility discourages investors as there is no guarantee when the commercial activity within a tribe might be halted, or for how long. The area contains various mineral ores, but the tribal people have never allowed any local or foreign company to search for precious minerals.

6. Agriculture

Pakistan has the biggest canal network for irrigation in the world. Although there are few rivers flowing in the tribal areas, no major canals or distributaries have been constructed for irrigation purposes. The lack of electricity in most of the areas also hampers agriculture production. People mostly depend on rain for growing their crops. Those who can afford it use generator-powered tube wells, an expensive option.

7. Conclusion

The people of the tribal areas have been deprived of their basic rights. In comparison to other areas, there is a general sense of deprivation. The lacks of infrastructure and social services, as well as the absence of economic opportunities, have made the area a haven for antisocial elements and their illegal activities. The FATA thus became a den for smugglers and the narcotics business.

C. POLITICAL SYSTEM

1. Introduction

Political parties and politicians are an integral part of any modern democratic setup and play an important role in the life of nations. They educate and organize people, defend their rights and privileges, and also fight against negative tendencies and retrogressive forces. There are no political parties as such in the tribal areas, a fact which also hampers development work in the area.

2. Representation of the FATA

The FATA was given representation in the West Pakistan Assembly under provisions of the 1956 Constitution.⁷⁴ Its provincial representation, however, was

⁷⁴ "1956 Constitution of Pakistan". Retrieved on May 24, 2005 from <http://www.storyofpakistan.com/articletext.asp?artid=A060>

abolished in the 1973 Constitution. Consequently, the FATA have no provincial assembly seats. Eight Members of the National Assembly (MNA) from the FATA (one from each agency and one from Dara Adam Khel and Dera Ismail Khan) are elected on the basis of adult franchise. The non-representation of tribal people in the Provincial Assembly, besides being anomalous, is yet another major case of deprivation, as the tribal areas are funded by the Provincial Assembly and not by the National Assembly. The eight FATA senators, who represent tribal people in the Senate, are elected by the eight MNAs of the FATA. These members of the parliament participate in the process of legislation for the entire country but cannot make law for their own area.

3. Socio-Economic Situation

The socioeconomic situation is really a cause of poverty, backwardness, and tribal people's indulgence in illegal trade. The comparative socioeconomic data clearly shows the government's interest in the development of the tribal area vis-à-vis the NWFP and the rest of the country. (See Table 1.) The poor socioeconomic situation is one reason the area became the Wild West.

4. Conclusion

People of the area do have political awareness, but the *maliks* and PAs do not want change, as they would lose their own importance, privileges and authority⁷⁵. Tribal people have explicitly expressed their feelings on number of occasions, and various newspaper articles agree that the people want a change in the system. The younger generation does not want to be isolated from the outside world, nor do they want to follow a feudal system in which the appointment of the *malik* travels down the family line. People of the area demand equal opportunities for everyone, and only a change in the political system can bring that change.

⁷⁵ Lieutenant General (Retired) Ali Muhammad Jan Aurakzai.

DESCRIPTION	PAKISTAN	N.W.F.P	FATA
Area (sq. km)	796,095	74,521	27,220
Population (millions) (1998 Census)	130.580	17.555	3.738
Pop. density (per sq. km)	164	236	115
Cultivated area (million hectares)	21.92	1.71	0.19
Pop. per cultivated hectare	6	10	17
Irrigated area (million hectare)	18.17	0.86	0.10
Pop. per irrigated hectare	7	21	32
Forested area (million hectare)	3.59	1.31	0.03
Literacy rate (%)	<u>45.00</u>	<u>39.30</u>	<u>17.42</u>
Male	56.50	58.4	29.50
Female	32.60	19.9	3.5
<u>Participation Rate (%)</u>			
Primary level	77	64.50	41.3
Higher education	29.7	26.4	9.08
Male	36.2	39	15.18
Female	22.3	11.5	1.58
Pop. per hospital bed (#)	1450	1869	2327
Population per doctor	1529	4946	8189
Roads per sq. km	0.31	0.13	0.17

Table 1. FATA: Comparative Socio-Economic Indicators⁷⁶

⁷⁶ "Federal Bureau of Statistics". Retrieved on October 28, 2005 from http://statpak.gov.pk/depts/fbs/publications/pocket_book2003/pocket_book.html and Hasan. "Not Gone are the Days". Retrieved on July 20, 2005 from <http://www.jang.com.pk/thenews/mar2004-weekly/nos-14-03-2004/spr.htm#top>

V. RECOMMENDATIONS

A. INTRODUCTION

Clearly, the time has come to initiate a planned, gradual process of absorption of the tribal areas. The problems of the FATA do not have a quick fix solution. As a first step, the government should initiate the process of various administrative reforms. The FATA do not need a plan that is implemented in bits and pieces; it will not be satisfied with temporary patches or solutions. There must be a farsighted, comprehensive plan. No steps should be taken which might cause an armed rebellion against the government.⁷⁷ Bringing the tribal areas into the mainstream requires a phased program, and change should be undertaken slowly with the consent of the local tribes. For almost quarter of a century, the FATA has paid a huge price for the instability in neighboring Afghanistan; now it is time for peace and progress.

Recommended reforms should be introduced in three phases.

Phase 1: Changes which are immediately necessary (within one to two years)

Phase 2: Changes that are necessary to bring the tribal areas into political equality with the rest of the country (three to five years)

Phase 3: Absorption into the main stream of the country.

B. ADMINISTRATIVE REFORMS

1. Phase 1: Immediate Changes

a. Devolution of Power Plan

The reform package should extend to the FATA the Devolution of Power Plan. This step would allow the participation of tribes in the governance of the area and make it possible to develop institutions of local governance. The devolution of power would put the tribal people in the driver's seat and their fate would no longer be decided by the PAs or the *maliks*. Rather, tribal members themselves would elect their leaders, and the leadership would no longer be

⁷⁷ Lieutenant General (Retired) Ali Muhammad Jan Aurakzai.

handed down within families. With this plan, the tribes will have representation in the NWFP provincial assembly and democracy will be restored.

b. Local Government System

The agency councils and adult franchise, introduced in 1998, bring some semblance of tribal participation. The local government system as it exists in the rest of the country should be introduced in the agencies.

- (1) The agency councils should have elected members.
- (2) Women should be given representation in the councils.

c. Education Regarding Women's Participation

In Pashtun culture, women stay in the home, as it is male dominated society. The government needs to educate people about women's rights and the importance of women's participation in politics and local affairs. Women are not simply to be used for production and reproduction; they should enjoy equal rights with men.⁷⁸ Women must be allowed to participate in the administration by elders of the area and family members. Initially the numbers of women participating may be very small, but gradually, with time and awareness, the area will see more participation by women.

d. FATA Secretariat

A separate FATA secretariat should be established to provide assistance in developing a structure of social services for the tribal people.

e. Psychological Operations

A political campaign should be launched immediately to support the idea of amalgamating tribal areas into the NWFP. This is necessary to prepare the people psychologically and to allow the government to take appropriate measures against any uprising.

f. Division of Tribal Area

The tribal areas should be carefully divided into two distinct parts: one which is accessible for development, and the other which is to continue as an inaccessible closed pocket area. The tempo of development endeavors in the

⁷⁸ Anna Simons. "Anthropology of Conflict". Naval Postgraduate School, October 3, 2005.

open and accessible portion of the belt should be pursued with vigor and zeal, making it splendidly attractive for the people of the closed pocket areas. Simultaneously, the government should also make an effort to develop communications to the closed pocket areas so they will become accessible for development work and the establishment of the government writ.

2. Phase 2: Necessary Changes

a. Elimination of PAs, Maliks and Khassadars

The present administrative apparatus was devised to meet colonial objectives. In the present day, the system is not responsive to the needs of the common tribal people. The institutions of PA, *maliki* and *khassadari* have lost authority. These institutions should be eliminated, and *nazim* and *naib nazim* should replace PAs and *maliks*. The *khassadars* and levies should be converted into a regular police force to ensure peace and security in the area.

b. System of Checks and Balances

The existing administrative arrangement for FATA totally lacks administrative accountability. A system of checks and balances should be introduced to minimize the abuse of power.

c. Legal Protection

To reduce the suffering of this largely deprived and neglected section of society, the measures undertaken by the government should be included in formal policies. This can be done by providing legal protection through the constitution. Such measures would help to boost the people out of misery so they can live as free and equal citizens with the rest of the country.⁷⁹

d. Elimination of the Tribal Area

Tribal people are equal participants in the socioeconomic development of the country. The main commercial centers of the country have provided equal opportunities in accommodating the tribesmen. More than 30 percent of the Pakistan military are from tribal areas. Most of the tribal people have acquired estates in major cities and have settled there permanently. According to one estimate, the population of tribal people settled in other parts of

⁷⁹ Adil Zareef. "FATA: Time to Reform the Colonial System". Retrieved on September 8, 2005 from <http://www.jang.com.pk/thenews/aug2004-daily/06-08-2004/oped/o4.htm>

the country exceeds the population that remains in the tribal areas.⁸⁰ The Governor of NWFP is already looking after the affairs of the tribal areas through PAs. It is therefore on this premise that very term "tribal area" appears out of harmony with the time.

Elimination of the tribal area will help the people of the area in many ways. Once it is part of the NWFP, the people would be under the protection of the constitution and civil human rights. Funds allocated for the area would be spent much more religiously for the purposes for which they are intended. Police would be able to enter the area and deal with the terrorists, criminals, and other culprits, and above all, the writ of the government would be established.

e. *Pashtunistan*

Name of the NWFP should be changed to Pashtunistan. As Punjabis live in Punjab, Sindhis live in Sind, and Balochis live in Balochistan, why shouldn't Pashtuns should live in Pashtunistan? This will make it easier to merge the tribal areas with the NWFP, as Pashtuns of the area will gain their own identity.

f. *Return of Afghan Refugees*

Pakistan still bears the immense burden of feeding and housing over two million Afghan refugees living in the country. Over time they have shifted from refugee camps and settled in the cities. They have found jobs in various organizations or have established their own businesses. Afghan refugees are involved in most of the criminal activities in Pakistan. In the past, the Pakistan government has made efforts to repatriate the Afghanis, but in vain. The United Nations Humanitarian Commission for Refugees and the international community should make an effort to repatriate Afghan refugees by giving them incentives of land and job opportunities in Afghanistan. It is an uphill battle, but this is necessary to bring development, progress, and control by the government in the tribal areas.

⁸⁰ Badshah and Jehangir. *Futuristics of Tribal Administration*. 129.

C. JUDICIAL REFORMS

1. Phase 1: Immediate Changes

a. Amendment in FCR

The FCR may be a draconian law or black law, but the tribal people still want it and prefer it over the laws of the Supreme Court or High Court⁸¹. The decisions made by the *jirga* are speedy and the justice is provided in hours or days. The normal judicial system of Pakistan takes months and years to reach a decision. The tribes are proud of their simple judicial system and would not like to lose it.⁸² Certain important amendments to the FCR regarding the powers vested in the PA are required to bring harmony in the area. For the time being, only necessary amendments to the FCR should be made, to make it more objective.

b. Collective Responsibility

The concept of tribal and territorial responsibility has also lost its effectiveness. A lot of people have settled outside their tribes and if someone commits a crime, why should the complete tribe pay for that? It is against the basic principles of democracy. The clause of collective responsibility should be removed from the FCR.

2. Phase 2: Necessary Changes

a. Extension of Supreme / High Court Jurisdiction

After seeing the public reaction to the implementation of various reforms, only gradually should the jurisdiction of High Court and Supreme Court be extended to the FATA and the FCR be abolished.

D. ECONOMIC REFORMS

1. Phase 1: Immediate Changes

a. Funds Channeled through Local Bodies

Funds allocated for the development of the area should be channeled through the local bodies or local *jirgas* to be asked to supervise the

⁸¹ Lieutenant General (Retired) Ali Muhammad Jan Aurakzai

⁸² Badshah and Jehangir. *Futuristics of Tribal Administration*.

development work rather than through *maliks* and PAs,⁸³ with monitoring bodies ensuring full transparency.

b. Social Services

Funds should be directed for social development with a focus on provision of basic health facilities, clean drinking water, electrical generation using wind, sun, and water as sources, constructing schools and colleges to improve the literacy rate, and projects aimed at generating employment.

c. Construction of Roads

The most important job right now in the tribal areas is the construction of a road to every village, including the most inaccessible and remote areas. With roads, change will come automatically as the people of the area are exposed to the outside world.

2. Phase 2: Necessary Changes

a. *Special Tribal Economic Zone*

The FATA might be turned into a Federally Administered Special Tribal Economic Zone (STEZ), giving a legitimate long term and permanent economic livelihood to the locals. Most smuggled goods pass through these areas; why not make businessmen out of smugglers, using economic activity to eradicate social frustrations? Terrorism can only be engaged positively in the FATA if the government plans a long term economic activity by launching the STEZ, a radical but practical way to ensure that the tribal people achieve economic liberation.⁸⁴

b. Irrigation

The government must make efforts to support agriculture in the area. Small dams should be constructed throughout the area to cache the water and then use it for irrigation and the production of electricity. A system of canals might be constructed, or water sprinklers could be used to water the fields with tube wells as the source of water.

⁸³ The funds given to the Political Agent for the development of the agency are not auditable. Most of the funds are not used for the purpose for which they were issued.

⁸⁴ Ikram Sehgal. "Special Tribal Economic Zone". Retrieved on October 26, 2005 from <http://world.mediamonitors.net/content/view/full/792>

c. Consistent Effort

The Pakistan government's efforts in the FATA must remain steady to reduce the incidence of poverty through sustainable and appropriate development activities and facilitate the mainstreaming of FATA into the country's economic and political system.

E. POLITICAL REFORMS

1. Representation in Provincial Assembly

Tribal people should be given representation in the provincial assembly of the NWFP. The provincial ministers should be elected on the basis of adult franchise, just as the ministers for the national assembly are elected.

For selection criteria, a bachelor's degree should be the minimum education level for eligibility to contest the election. *Maliks* and PAs should be discouraged from participating in the polls; this would be very difficult to execute but is necessary to eliminate the feudal system prevailing in the area. The FATA provincial ministers would be chosen from among the local people, and would strive harder to ensure progressive development in the area and to win the hearts of the people in order to be re-elected.

2. Local Councils

The tribal areas should have their own elected councils headed by elected *nazims*. The *nazim* would be able to solve the problems faced by the local tribal people and insure the success of the development work at the grassroots level.

3. Political Parties

Presently there are no political parties in tribal areas. The parties which already exist in the country should be allowed to nominate candidates for elections.

4. Women's Representation

The women of the tribal areas should be encouraged to participate in local elections. At least for the senate, a minimum of 25 percent of the seats should be reserved for women.

F. CONCLUSION

At present, it is necessary to dismantle terrorist sanctuaries by bringing tribal areas under the direct control of the federal authorities, introducing regular development works, and establishing the rule of law in the so-called "no go" areas. The bottom line is that Pakistan does not want to impose its will on the tribal people or take things to a limit where there might be an armed rebellion, which could happen because these people are armed to the teeth. Therefore, the government of Pakistan is not ready to challenge them. "The Pakistan government is facing an enemy that is far different and far more ethereal than the one it expected."⁸⁵ The factors discussed in this thesis are those which created Pakistan's political uncertainty and contributed to its social integration problem. The situation deserves the understanding of the international community, and particularly those who are impatient with the progress of apprehending terrorists from the FATA.

The change in the tribal areas will come slowly, by winning the hearts and minds of the people through the investment of time, money, and effort. It will require social and economic development and political interaction. Bringing a change to the FATA is an uphill struggle which requires a detailed plan spread over years; there are no quick fix solutions. The tribal areas have suffered due to the government's act of oversight for over half a century. It is never too late. If the start is well-intentioned and if actions and policies are sustained and not abandoned halfway, the tribal areas could be lifted out of the quagmire of violence and poverty and integrated into the national mainstream. It is very important that the money promised by the government for development work in tribal areas be honestly spent through a process of transparency and accountability.⁸⁶ "The political reforms must be matched with equally balanced

⁸⁵ David Rohde. "Concern Rises in Pakistan of a War without End". Retrieved on January 8, 2005 from <http://proquest.umi.com/pqdweb?index=5&did=727047261&SrchMode=1&sid=3&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1105771258&clientId=11969>

⁸⁶ Ayesha Khan. "High Stakes on the Frontier". Retrieved on September 12, 2005 from <http://proquest.umi.com/pqdweb?index=0&did=711826851&SrchMode=1&sid=2&Fmt=4&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1105770678&clientId=11969>

economic opportunities resulting in progressive social change.”⁸⁷ This will mean fortifying the western borders and reviving the nation by extending its writ of authority into the tribal areas.

⁸⁷ “Pakistan: Focus on Tribal Reforms.” Retrieved on July 20, 2005 from <http://www.irinnews.org/print.asp?reportid=27514>

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APPENDIX A

CONSTITUTION OF PAKISTAN TRIBAL AREAS⁸⁸

246.

In the Constitution,

- (a) "Tribal Areas" means the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes
 - (i) The Tribal Areas of Baluchistan and the North- West Frontier Province; and
 - (ii) The former States of Amb, Chitral, Dir and Swat;
- (b) "Provincially Administered Tribal Areas" means
 - (i) The districts of Chitral, Dir and Swat (which includes Kalam), the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra district and the former State of Amb; and
 - (ii) Zhob district, Loralai district (excluding Duki Tehsil), Dalbandis Tehsil of Chagai District and Marri and Bugti tribal territories of Sibi district; and
- (c) Federally Administered Tribal Areas includes
 - (i) Tribal Areas adjoining Peshawar district;
 - (ii) Tribal Areas adjoining Kohat district;
 - (iii) Tribal Areas adjoining Bannu district;
 - (iv) Tribal Areas adjoining Dera Ismail Khan district;
 - (v) Bajaur Agency,
 - (va) Orakzai Agency,
 - (vi) Mohmand Agency,
 - (vii) Khyber Agency;
 - (viii) Kurram Agency;

⁸⁸ Constitution of Pakistan. Retrieved on January 18, 2005 from http://www.nrb.gov.pk/constitutional_and_legal/constitution/part12.ch3.html

- (ix) North Waziristan Agency, and
- (x) South Waziristan Agency.

247.

(1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein.

(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions.

(3) No Act of Majlis -e- Shoora (Parliament) shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of Majlis -e- Shoora (Parliament) or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction.

(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of Majlis -e- Shoora (Parliament), and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the Province.

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace

and good Government of a Federally Administered Tribal Area or any part thereof.

(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper:

Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal jirga.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless Majlis-e-Shoora (Parliament) by law otherwise provides: Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day.

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APPENDIX B

CONSTITUTION OF PAKISTAN FUNDAMENTAL RIGHTS AND PRINCIPLES OF POLICY⁸⁹

7. In this Part, unless the context otherwise requires, "the State" means the Federal Government, [6][Majlis-e-Shoora (Parliament)], a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax.

8. (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3) The provisions of this Article shall not apply to:-

(a) any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or [7]

(b) Any of the

(i) Laws specified in the First Schedule as in force immediately before the commencing day or as amended by any of the laws specified in that Schedule;

(ii) Other laws specified in Part I of the First Schedule; and neither such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision of this Chapter.

(4) Notwithstanding anything contained in paragraph (b) of clause (3), within a period of two years from the commencing day, the appropriate

⁸⁹ Fundamental Rights and Principles of Policy. Retrieved on September 6, 2005 from

<http://www.pakistani.org/pakistan/constitution/part2.ch1.html>

Legislature shall bring the laws specified in [\[8\]](#)[Part II of the First Schedule] into conformity with the rights conferred by this Chapter:

Provided that the appropriate Legislature may by resolution extend the said period of two years by a period not exceeding six months.

Explanation :- If in respect of any law [\[9\]](#)[Majlis-e-Shoora (Parliament)] is the appropriate Legislature, such resolution shall be a resolution of the National Assembly.

(5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.

9. No person shall be deprived of life or liberty saves in accordance with law.

10. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defense of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorize the detention of a person for a period exceeding [\[10\]](#)[three months] unless the appropriate Review Board has, after affording him an opportunity of being heard in person, reviewed his case and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and, if the detention is continued after the said period of [three months], unless the appropriate Review Board has reviewed his case and reported, before the

expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention.

Explanation-I: In this Article, "the appropriate Review Board" means,

(i) In the case of a person detained under a Federal law, a Board appointed by the Chief Justice of Pakistan and consisting of a Chairman and two other persons, each of whom is or has been a Judge of the Supreme Court or a High Court; and

(ii) In the case of a Person detained under a Provincial law, a Board appointed by the Chief Justice of the High Court concerned and consisting of a Chairman and two other persons, each of whom is or has been a Judge of a High Court.

Explanation-II: The opinion of a Review Board shall be expressed in terms of the views of the majority of its members.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, [\[11\]](#)[within fifteen days] from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose.

(6) The authority making the order shall furnish to the appropriate Review Board all documents relevant to the case unless a certificate, signed by a Secretary to the Government concerned, to the effect that it is not in the public interest to furnish any documents, is produced.

(7) Within a period of twenty-four months commencing on the day of his first detention in pursuance of an order made under a law providing for preventive detention, no person shall be detained in pursuance of any such order for more than a total period of eight months in the case of a person detained for acting in a manner prejudicial to public order and twelve months in any other case:

Provided that this clause shall not apply to any person who is employed by, or works for, or acts on instructions received from, the enemy [\[12\]](#) [or who is acting or attempting to act in a manner prejudicial to the integrity, security or defense of Pakistan or any part thereof or who commits or attempts to commit any act which amounts to an anti-national activity as defined in a Federal law or is a member of any association which has for its objects, or which indulges in, any such anti-national activity.

(8) The appropriate Review Board shall determine the place of detention of the person detained and fix a reasonable subsistence allowance for his family.

(9) Nothing in this Article shall apply to any person who for the time being is an enemy alien.

11. (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.

(2) All forms of forced labor and traffic in human beings are prohibited.

(3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

(4) Nothing in this Article shall be deemed to affect compulsory service:-

(a) By any person undergoing punishment for an offence against any law; or

(b) Required by any law for public purpose provided that no compulsory service shall be of a cruel nature or incompatible with human dignity.

12. (1) No law shall authorize the punishment of a person:-

(a) For an act or omission that was not punishable by law at the time of the act or omission; or

(b) For an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

(2) Nothing in clause (1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time

since the twenty-third day of March, one thousand nine hundred and fifty-six, and an offence.

13. No person:-

(a) Shall be prosecuted or punished for the same offence more than once; or

(b) Shall, when accused of an offence, be compelled to be a witness against himself

14. (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence.

15. Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.

16. Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of Public order.

17. (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of [\[13\]](#) [sovereignty or integrity of Pakistan, public order or morality].

[\[14\]](#)(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan [\[14A\]](#) [or public order] and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan [\[14A\]](#) [or public order], the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

[\[14B\]](#) [Provided that no political party shall promote sectarian, ethnic, regional hatred or animosity, or be titled or constituted as a militant group or section.]

(3) Every political party shall account for the source of its funds in accordance with law. [\[14C\]](#)

[(4) Every political party shall, subject to law, hold intra-party elections to elect its office-bearers and party leaders.]

18. Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent:-

(a) The regulation of any trade or profession by a licensing system; or
(b) The regulation of trade, commerce or industry in the interest of free competition therein; or

(c) The carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

19. Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [\[15\]](#) [commission of] or incitement to an offence.

20. Subject to law, public order and morality:-

(a) Every citizen shall have the right to profess, practise and propagate his religion; and

(b) Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

21. No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

22. (1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(3) Subject to law:

(a) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and

(b) No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

23. Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

24. (1) No person shall be compulsorily deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of:-

(a) Any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(b) Any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or

(c) Any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or

(d) Any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or

(e) Any law providing for the acquisition of any class of property for the purpose of

(i) Providing education and medical aid to all or any specified class of citizens or

(ii) Providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or

(iii) Providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

(f) Any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

25. (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

26. (1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

27. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth. Provided that, for a period not exceeding [\[16\]](#)[forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan: Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

(2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province. for a period not exceeding three years, prior to appointment under that Government or authority.

28. Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.

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